

In the Matter of	)	
	)	
Review of the Commission's	)	
Broadcast and Cable	)	<b>MM Docket No. 98-204</b>
Equal Employment Opportunity	)	
Rules and Policies	)	

## **COMMENTS OF BROADCAST COMPLIANCE SERVICES**

On December 21, 2001, the Federal Communications Commission (the “FCC” or the “Commission”) requested comments on its proposed revised equal employment opportunity rules (the “EEO Rules”) providing specific measures for achieving broad outreach in recruitment by the broadcast and cable industries, including multichannel video program distributors. *Second Notice of Proposed Rule Making, MM Docket No. 98-204, In the Matter of Review of the Commission’s Broadcast and Cable Equal Employment Opportunity Rules and Policies (rel. December 21, 2001)* (the “Second NPRM”). It is to this Request that these Comments respond.

### **The Second NPRM Requires Affirmative Notice of Broadcasters’ Vacancies to Potential Applicants.**

The proposed EEO Rules require broadcasters, cable systems and other multichannel video program distributors to “reach out in recruiting new employees beyond the confines of their circle of business and social contacts to all sectors of their communities [because] ... repeated hiring without broad outreach may unfairly exclude minority and women job candidates....” Second NPRM at 2, ¶5, quoting the *Report and Order in MM Docket Nos. 98-204 and 96-16, 15 FCC Rcd 2329 (2000) (rel. February 2, 2000)*, (the “Report and Order”), ¶3, 15 FCC Rcd at 2331. The core requirement of these proposed EEO Rules is wide dissemination of all job vacancies, a requirement the Commission identifies as “essential to meaningful outreach.” Second NPRM at 3, ¶6; Report and Order, ¶85, 15 FCC Record at 2368.

In its Report and Order, the FCC specifically noted that an employer covered by the proposed EEO Rules could disseminate its job vacancies “through any combination of methods sufficient to ensure that its recruitment efforts are inclusive.” Report and Order at 40 ¶85.

### **The Proposed EEO Rule Again Focuses on the Recruitment Process Used**

The proposed EEO Rule would again require that covered employers engage in recruitment reasonably calculated to reach all segments of the community in which they recruit,

including minorities and women, properly focusing on the process and the medium of recruitment. *Memorandum Opinion and Order, In the Matter of Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of the EEO Streamlining Proceeding, MM Docket Nos. 98-204, 96-16 (rel. November 22, 2000)* (the "MOO") at 15, ¶ 45. By the Commission's recognition that an employer's demonstration that its selected recruitment methodology could be expected to reach minority or women applicants is also per se demonstration of its compliance with the proposed EEO Rules, the Commission obviates the need for any proscribed demonstration of, or pressure to achieve, specific recruitment results or employment decisions. *Id.*

**The Commission Has Recognized the Appropriate Use of Outside Resources in the Implementation of the Proposed EEO Rules.**

In its first proposed EEO Rule, the Commission expressly recognized that, in satisfying its recruitment obligations, a covered employer could utilize the services of an outside organization to assist in designing and implementing such recruitment efforts as identifying productive recruitment sources, facilitating the delivery of vacancy notifications to these sources and other requesting sources and/or in preparing reports to enable self-examination of recruitment efforts. *Id.* at 15, n. 48.

The Commission's recognition of the role of outside organizations in 2000 remains in synch with the realities of the current workplace. Because of the increasing sophistication of human resources issues, the significant risks and liabilities associated with noncompliance and the limitations presented by downsizing of human resources personnel and overworked incumbent staffs, most employers have now increasingly turned to the superior expertise, objectivity and available staffing of outside resources for their human resources functions, including recruiting. A recent survey by the Society for Human Resource Managers ("SHRM")

quantifies this continued expansion of the outsourcing: in 2002, 74% of the companies surveyed reported outsourcing at least one human resources function, up from 58% in 1999. The Miami Herald (Feb. 13, 2002).

The Commission has consistently declined to permit the delegation of an employer's responsibility to an outside organization for the recruitment, recordkeeping and reporting requirements of the EEO Rules. MOO at 15. *See also* MOO at 16, ¶50 (broadcasters can implement menu options on a joint basis as long as each broadcaster retains responsibility for the menu options it selects); *id.* at ¶¶ 51, 53, 55 (coordinated efforts by corporate licensee permitted only without any delegation of station responsibility) and MOO at 17, ¶54 (joint efforts of state or local broadcast associations permitted only without any delegation of responsibility).

For example, the Commission specifically rejected an earlier recommendation that a broadcast station could satisfy its outreach obligations simply by posting job vacancies on a website. The Commission recognized that the passive act of webposting, with its untested efficacy, is insufficient to provide the affirmative notice and outreach envisioned by the Rule.

The Commission specifically noted that, while covered employers may engage in joint recruitment efforts, each employer remains individually responsible for achieving broad outreach. The Commission declined to accept or recognize as effective a single, "one size fits all" recruitment model for all stations for all situations. The Commission noted that a covered employer may "widely disseminate job postings through any combination of methods sufficient to ensure that its recruitment efforts are inclusive." *Id.* at 40, ¶85.

The Commission also specifically refused to permit covered employers to delegate their outreach responsibilities, or the FCC's oversight function, under the EEO Rules to available state broadcast association programs through a "certification of participation" program. Report and

Order at 42, ¶¶91. Variances among and between the actual components of the particular state broadcaster association programs, different requirements in different states, confusion to the public, difficulty in enforcement and primary reliance on the use of the internet supported the Commission's rejection of this proposal.

The Commission repeated the distinction between the EEO Rules' affirmative obligation to provide notices of vacancies to requesting parties and the unacceptable passive act of simply making this information available to those who take the initiative to look at a specialized site, *id.* at 43-44 ¶¶96-99, again recognizing the propriety of a third party role in affirmatively advising requesting organizations of vacancies on behalf of a particular employer. *Id.* at 44, ¶97. The Commission emphasized that the affirmative obligation to notify recruitment sources that request notice of vacancies is a supplement to the "core, non-delegable obligation" to disseminate information concerning all job vacancies widely. *Id.* at 44, ¶98.

Likewise, the Commission has declined to delegate its responsibility for the certification of compliance with the EEO Rules either to any outside organization or to any other governmental agency.

### **The New Obligations under the First EEO Rule Generated the Formation of Broadcast Compliance Services.**

Broadcast Compliance Services ("BCS") is a service created specifically in 2000 to assist employers in their compliance efforts with the FCC's revised EEO Rules. A subscription service available to all employers, it combines sophisticated technology, broadcast and cable industry experience, understanding of the legal requirements and the priorities of ease of use and cost of service, while promoting no agenda. Subscribers pay for a single service: providing employers with unprecedented outreach and the new methods, skills and resources necessary for compliance with the FCC's EEO Rules in a manner and through a method that permits

employers to utilize this data in compliance with their other employment-related obligations. It is a realistic, efficient and affordable mechanism for the implementation of the EEO Rules, and it demonstrates that the proposed EEO Rules can be implemented economically, effectively and efficiently without undue burden on covered employers.

Founded by individuals who bring together years of experience in broadcasting, human resources management and government relations, the BCS service is based on a system that has been used by Fortune 500 companies for over 20 years to provide automated employment outreach and record keeping services. It combines proven recruitment tools with a proprietary database of tens of thousands of resources --- comprised of community-based, faith-based, educational and professional development organizations --- to provide non-traditional sources of applicants far beyond the outreach capabilities of any station, cluster of stations, or cable operator. Job vacancy announcements can now reach candidates both in the local community and across the nation with the speed requisite to filling time-sensitive vacancies and the scope requisite to attracting the best qualified applicants.

By utilizing the most effective methodology ever made available to assist broadcasters and cable operators in achieving the broadest possible outreach for job dissemination, the service expands a station's outreach efforts while reducing its attendant costs associated with EEO recruitment and workforce development, including significant postal expense savings.

**BCS Eliminates the Complaint that EEO Compliance is Burdensome.**

The BCS program provides broadcast and cable employers access to its exclusive internet-based recruitment and reporting engine. By methods as simple as entering their station call letters and password, employers can access their account from any computer connected to the internet. Literally with the click of a mouse, they can:

- Create and post a job vacancy announcement;
- Instantly notify a customized list of targeted local, regional or national resources of that posting;
- Solicit resumes at regular intervals, even without pending vacancies;
- Review account histories of posted jobs;
- Review all recruitment resources to which job announcements were sent;
- Send announcements of job fairs and other initiatives;
- Access BCS customer support services and
- Provide numerous other functions related to their outreach initiatives.

BCS is an innovative industry-crafted solution, designed with the flexibility to satisfy not only any final EEO Rules promulgated by the FCC, but also a station's voluntary and historical preferences on outreach and recruitment practices, its independently mandated recruiting obligations through contractual commitments or government agencies and the real-world fact that diversity is just good business.

The FCC addressed this issue favorably in the MOO:

. . . [W]e intend to afford broadcasters flexibility in designing recruitment techniques that will result in broad outreach. For instance, an outside service might assist the broadcaster in identifying productive recruitment sources, facilitating the delivery of vacancy notifications to such sources, and/or preparing reports to better enable the broadcaster to track and monitor the results of its recruitment efforts.

MOO at 15, n. 48

**Continuous Updating of the Recruitment Database Is a Prerequisite for Identifying Productive Resources.**

BCS has developed unique infrastructure components that make its outreach capabilities powerful, yet simple to use. The heart of the BCS service is the proprietary recruitment database.

To maintain this dynamic and voluminous database, BCS agents continuously contact recruitment sources to update their contact information. Because of this unique effort, the BCS database is constantly renewed and improved to provide non-traditional sources of applicants far beyond the outreach capabilities of any single station or group of stations in their generalized approach to recruiting. Such continuous updating of resources is what separates active outreach from passive activities such as webposting, and separates productive, receptive resources from nebulous internet “hits.” It must be remembered that internet “hits” are merely a measure of the number of visitors to a site, and they do not indicate whether any of those visitors took any subsequent action to apply for any of these jobs. BCS also avoids both reporting false numbers of sources by combining lists containing the same contacts and wasting resources in duplicating efforts to identify and coordinate the same sources.

**A Marketplace-based Solution to EEO Outreach Issues Has the Potential to Yield Better Outcomes.**

When covered employers utilize the services of a marketplace-based workforce development company to help them achieve compliance with the EEO Rules, the outcome can be far superior to those when employers seek only to meet their minimum requirements. BCS subscribers not only receive straightforward EEO recruitment, they also benefit from documentation through a new and innovative private-sector solution, workforce development by expanding the scope of the station's recruitment efforts to reach more qualified applicants than ever previously possible; reduction of litigation and compliance risks; proven costs savings; relief from demands on valuable staff time for training and compliance functions; and a corresponding reduction of staff and applicant frustration.

BCS provides a geographical information system that can coordinate the location of the recruiting station with the resources directing applicants into the workplace. The geo-coded



system works well for stations in urban, suburban and rural areas in defining and addressing the precise geography and scope of their targeted areas.

BCS provides a specific dissemination of listings for each mid- and upper-level category opening, as appropriate, to job banks, educational and professional development organizations and media trade groups, including those whose membership includes substantial participation by women and minorities.

BCS accomplishes this flexibility and accuracy by using a proprietary software program with multiple databases running on an SQL server, which accepts notices of job openings and then matches the station location with those of the recruiting sources, automatically transmitting the notices to those sources. Recruiting sources that lack email capability are notified by fax, mail or other available or requested media.

The BCS program is an internet job bank service, listing every available job at every participating station in the nation with every available state and federal employment service and a host of special recruitment sites, such as the Department of Labor's America's Job Bank.

BCS also provides a "reverse search" capability, placing applicants' resumes in the hands of station personnel wherever the applicant seeks employment, whether across town, across the country or in (or out of) a specific, targeted market.

Through the BCS system, employers can routinely and accurately incorporate notification to all organizations requesting job listings. Any organization requesting listings from one BCS participating station will be notified of listings for every other BCS participating station.

BCS subscribers can also use the system to disseminate notices of their job fairs, scholarships, fellowships, internships and mentoring programs, etc. through the system, accessing the same resources used for their job vacancy searches.

BCS also has the capacity to provide ancillary services, such as the identification of potential employer tax credits for certain recruiting and employment efforts. BCS can coordinate and automate the process of identifying these opportunities and collecting the credits.

The BCS program can generate comprehensive reports that categorically document each station's outreach efforts, providing the stations full accountability. The system is flexible enough to conform report formats to any final FCC requirements and will be modified automatically as required by new regulations.

In addition, this same data can be used to generate recruiting tracking reports for internal analysis or compliance with other independent government obligations, such as EEO-1 reports or affirmative action plan requirements for federal or local government contractors. This is a particularly valuable service to those employers who must file both the required FCC employment forms and the EEO-1 form. This flexibility addresses some of the concerns and suggestions voiced in previous comments to the first proposed EEO Rules on behalf of employers with multiple obligations and reporting requirements for various government agencies. BCS subscribers have instant, constant and confidential access to all these data and reports online and can use this data and prior reports to update, customize and produce required reports and analyses on demand.

## **Conclusion**

The key components of the EEO Rules are the focus on broad outreach in the notification of all vacancies, the selection of a methodology sufficient to ensure inclusive recruitment efforts and the retention of employer responsibility. While employers traditionally have been responsible for meeting these tests by individual efforts, the Commission should enable, even encourage, employers to use readily accessible technology and techniques, like the BCS system,

that assure more comprehensive extension of employment opportunities to all qualified prospective applicants.

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